

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: DEL FAVERO, JR. et al.
Title: METHOD AND SYSTEM FOR INFORMATION
RETRIEVAL BASED ON MENU SELECTIONS
Appl. No.: 10/006,930
Filing Date: 12/6/2001
Examiner: Merilyn P. Nguyen
Art Unit: 2163
Confirmation Number: 9296

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants are in receipt of the Notice of Allowance for the above-captioned application. Applicants disagree with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and present the following facts per the procedure set forth in 37 C.F.R. § 1.705(b) to support their contention that the patent term adjustment should be 564 days instead of 308 days as calculated by the United States Patent and Trademark Office (PTO).

The Patent Office determined that the patent was entitled to 308 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of

the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 564 days of PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	913 days
(b) Total Applicant delay:	349 days
Final PTA Determination:	564 days

Applicants therefore respectfully request that the patent be accorded 564 days of PTA.

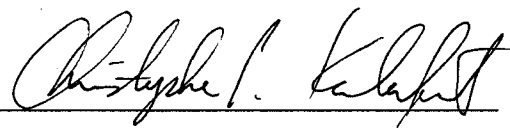
The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date January 8, 2009

By 

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CLOSE WINDOW

ALL CASES SELECT CASE

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 088245-3074

Application Number: 10/006930

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	12/06/2001	0		
Edit Delete	Notice to File Missing Parts	01/07/2002	32		
	Notice to File Missing Parts + 3 months	04/07/2002	122		
Edit Delete	Response to Notice to File Missing Parts	04/10/2002	125		3
	14 month From Application date	02/06/2003	427		
Edit Delete	Non-Final Office Action	06/17/2004	924	497	
	Non-Final Office Action + 3 months	09/17/2004	1,016		
	3 Year Period Starts	12/06/2004	1,096		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	12/21/2004	1,111		95
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	04/21/2005	1,232		
Edit Delete	Final Office Action	05/05/2005	1,246	(14)	
	Final Office Action + 3 months	08/05/2005	1,338		
Edit Delete	Request For Continued Examination	09/02/2005	1,366		28
	3 Year Period Stopped	09/02/2005	1,366	270	
Edit Delete	Non-Final Office Action	09/23/2005	1,387		
	Non-Final Office Action + 3 months	12/23/2005	1,478		
Edit Delete	Petition to Revive App. Received at PTO	05/30/2006	1,636		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/30/2006	1,636		158
	Petition to Revive App. Received at PTO + 4 months	09/30/2006	1,759		
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	09/30/2006	1,759		
Edit Delete	Petition to Revive App. Accepted	11/29/2006	1,819		
Edit Delete	Final Office Action	02/23/2007	1,905	146	
	Final Office Action + 3 months	05/23/2007	1,994		
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Edit Delete	Non-Final Office Action	06/21/2007	2,023		
	Non-Final Office Action + 3 months	09/21/2007	2,115		

correspondence events
270 days correct.
Difference of
PTA calcs = 256 days

Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/19/2007	2,174
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Edit Delete	Final Office Action	04/07/2008	2,314
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Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/29/2008	2,458
Edit Delete	Notice of Allowance	10/16/2008	2,506
Edit Delete	Notice of Allowance	10/16/2008	2,506
	Projected Patent Grant Date	04/28/2009	2,700

Totals:

913

349

PTA:

564

Created and maintained by
FOLEY
FOLEY & LARDNER LLP

FL total
- 308 PTO's clock
256 day discrepancy
allowance

Version: 3.01.14

LOGIN: Sharon Dudley

IP: 10.24.4.200

Foley & Lardner LLP